

Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1286

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AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 22-1-6 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2018]:

**Chapter 6. Marketplace Contractors**

**Sec. 1. This chapter does not apply to the following:**

- (1) Service performed in the employ of the state, a political subdivision, an Indian tribe, or an instrumentality of the state, a political subdivision, or an Indian tribe if the service is excluded from employment as defined in the Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.).
- (2) Service performed in the employ of a religious, charitable, educational, or other organization that is excluded from employment as defined in the Federal Unemployment Tax Act.
- (3) Service consisting of passenger transport provided in connection with technology offered by a transportation network company (as defined in IC 8-2.1-17-18). Such service is governed by IC 8-2.1-19.1.
- (4) Service related to a referral by a hiring hall maintained by a labor organization.
- (5) Service provided for:
  - (A) a public works project of the state or a political

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subdivision; or

(B) the erection, construction, alteration, structural repair, or structural improvement of a building, structure, or other improvement on land, excluding a single family dwelling or a single unit of a multi-family dwelling.

**Sec. 2.** The following definitions apply throughout this chapter:

(1) "Marketplace contractor" means a person or an organization, including an individual, a corporation, a limited liability company, a partnership, a sole proprietor, or other entity, that enters into an agreement with a marketplace platform to provide services to third party individuals or entities seeking those services. The term does not include a person or organization when the services performed by the person or organization consist of transporting freight, sealed and closed envelopes, boxes, parcels, or other sealed and closed containers for compensation.

(2) "Marketplace platform" means an organization, including a corporation, a limited liability company, a partnership, a sole proprietor, or other entity, that:

(A) operates an Internet web site or smartphone application that facilitates the provision of services by marketplace contractors to individuals or entities seeking the services;

(B) accepts service requests from the public only through the organization's Internet web site or smartphone application and does not accept service requests by telephone, facsimile, or in person at a retail location; and

(C) does not perform services at or from a physical location in Indiana.

**Sec. 3.** Notwithstanding any other law, a marketplace contractor shall be treated as an independent contractor for all purposes under state law and ordinances and resolutions adopted by political subdivisions (as defined in IC 36-1-2-13), if the following apply:

(1) All or substantially all of the payment for the services performed by the marketplace contractor is related to the performance of services or other output.

(2) The services performed by the marketplace contractor are governed by a written contract executed between the marketplace contractor and the marketplace platform.

(3) The written contract required under subdivision (2) includes the following provisions:



**(A) The marketplace contractor is providing services as an independent contractor and not as an employee of the marketplace platform.**

**(B) All or substantially all of the payments paid to the marketplace contractor are to be based on the performance of services or other output by the marketplace contractor.**

**(C) The marketplace contractor may work any hours or schedules the marketplace contractor chooses. However, if the marketplace contractor does elect to work specified hours or schedules, the marketplace platform may require the marketplace contractor to work during the specified hours or schedules that the marketplace contractor elected to work.**

**(D) Except as provided in clause (C), the marketplace contractor may perform services for other parties without restriction.**

**(E) The marketplace contractor bears responsibility for all or substantially all of the expenses that the marketplace contractor pays or incurs in performing the services, without the right to obtain reimbursement from the marketplace platform for the expenses.**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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